

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Calderon Analyst: Gloria McConnell Bill Number: AB 780

Related Bills: \_\_\_\_\_ Telephone: 845-4336 Amended Date: 04-13-99

Attorney: Janet Ballou Sponsor: \_\_\_\_\_

**SUBJECT:** Public Entities Report to EDD Names and SSA of Contractors

### SUMMARY

The bill would require public entities and contractors or subcontractors of public entities to report the following information to Employment Development Department (EDD) for inclusion in its new employee registry (NER), unless otherwise reported to EDD under current law:

1. Each public entity that makes state loans or grants would report the recipient's name, address, social security number (SSN) and the recipient's employer's name;
2. Each public entity, including the Franchise Tax Board (FTB), would report the name and SSN of each individual (sole proprietor) that contracts with the entity, unless otherwise reported to EDD under current law. In the event the contractor is a corporation or partnership, the name and SSN of the "responsible managing person" would be reported; and
3. Each contractor or subcontractor who contracts or submits a bid to contract with the state would report the name and SSN of each employee who will perform work on the state contract, unless otherwise reported to EDD under current law.

The bill describes the form and manner for reporting to EDD and provides the period during which the reported information would be retained by EDD.

### SUMMARY OF AMENDMENTS

The April 13, 1999, amendment would not require the reporting of service providers by public entities, if otherwise reported to EDD under current law.

The April 5, 1999, amendment removed a requirement that trades or businesses who contract with service providers report to EDD the service provider's name and identification number and instead would require contractors and subcontractors who contract with public entities to report their employees to EDD if otherwise currently unreported (above #3).

(FTB did not complete an analysis of this bill as introduced.)

### EFFECTIVE DATE

The above provisions would be operative July 1, 2000.

#### Board Position:

<u>      </u> S	<u>      </u> NA	<u>      </u> NP
<u>      </u> SA	<u>      </u> O	<u>      </u> NAR
<u>      </u> N	<u>      </u> OUA	<u>  X  </u> PENDING

#### Department Director

#### Date

**Gerald Goldberg**

**05/10/1999**

#### LEGISLATIVE HISTORY

AB 1630 (1999) This bill is generally the same as last year's AB 1630, which was returned without the Governor's signature because it was "unclear that the significant costs of collecting and reporting data regarding those who are independent contractors of state contractors and those who receive state loans and grants will result in increased child support collection."

#### PROGRAM HISTORY/BACKGROUND

Federal law requires each state to have a single agency responsible for enforcing child support, but permits delegation of specific tasks to local levels. The Department of Social Services (DSS) is designated as the California state agency. By state law, the county district attorneys (DAs) are delegated responsibility for enforcing child support, which includes collecting current payments and delinquencies. Beginning in late 1993 pursuant to legislative authorization, FTB began collecting delinquent child support on behalf of DAs as though the delinquencies were personal income taxes, using administrative tax collection remedies.

Under the Unemployment Insurance Code (UIC), employers are required on a quarterly basis to report to EDD information on its employees, which includes each employee's SSN. EDD's employer/employee information is available to FTB shortly after the end of each quarter. Additionally, under California law, EDD maintains the NER. All employers are required to report new hires within 20 days of their start-to-work date. The NER was created and is maintained in response to a federal mandate.

In addition, trades or businesses that pay \$600 or more for personal services to other than an employee are required to file an information return (1099MISC) at the end of the calendar year, reporting the nonemployee compensation to the Internal Revenue Service (IRS) and/or FTB.

Under current law and practice, FTB uses an automated collection system to garnish wages and attach bank accounts of debtors. Typically, the automated collection system uses the debtor's SSN to search tax records and tax information returns filed by banks, other third parties, EDD records and 1099 information to locate the debtor's assets. Upon a match of the SSN and the asset, a withholding order is issued. An order to withhold (OTW) is issued for bank accounts, cash, and cash equivalents. Continuous OTWs generally are used to attach contractual payments and/or nonemployee compensation. Earnings withholding orders (EWO) are used to garnish wages or, in the case of child support collections, may attach contractual payments and/or nonemployee compensation. An EWO for delinquent child support generally attaches 50% of the payment due the obligor.

To use EDD's quarterly wage information, FTB accesses EDD's data base. However, for FTB to use EDD's NER, EDD requires that FTB provide a magnetic media tape containing a list of the delinquencies. For collection of child support delinquencies, FTB routinely provides EDD with its list. However, the voluminous size of the PIT file precludes FTB from using this process for PIT collections.

In the case of corporations, partnerships, limited liability companies and other formally organized entities, the assets of the entity cannot be attached for the debt of a partner or "owner."

If a person is an officer of a corporation, the person is considered an employee for laws administered by EDD and would be included in EDD's current employer/employee records.

#### SPECIFIC FINDINGS

**Currently**, FTB contracts for various services in accordance with requirements outlined in the State Administrative Manual and rules of the Department of General Services. FTB additionally requires that the contracting party agree to comply with the laws administered by FTB, be current in filing returns and payment of any taxes, and be in good standing.

**Under California law**, EDD maintains California's New Employee Registry. Employers are required to report new hires within 20 days of their start-to-work date. The NER was created in response to a federal mandate. Under federal law, the state may set a civil penalty for employers that fail to comply with the reporting requirement. The penalty shall be less than \$25 (or \$500 if the failure is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report). Under California law, for employers that fail to report a new employee within the time required, a penalty of \$24 may be assessed (or \$490, if the failure is the result of conspiracy between the public entity and the contractor not to supply the required report or to supply a false or incomplete report).

**Under this bill**, as a public entity FTB would be required, within 20 days after a contract is executed, to report to EDD the name and SSN of each sole proprietor or the "responsible managing person" with which it contracts, unless otherwise already reported to EDD. Any "employer" who fails to comply with the reporting requirement would be subject to fines consistent with federal fines for employers who fail to report employees to the new employee registry.

#### Implementation Considerations

This bill would affect FTB as:

**1. A contracting state agency.** FTB would be required to report the names and SSN of each sole proprietor or the "responsible managing person" with which it contracts. Given that FTB's contracts would not be executed in mass on a given day, this analysis assumes it would report to EDD by paper document. The following implementation considerations are identified with respect to this reporting requirement:

- Because this bill would be operative on July 1, 2000, it is presumed that the reporting requirement is not intended to apply to contracts in existence on that date. To avoid confusion, the bill should expressly provide that the act would apply only to contracts either/or first executed and/or extended or renewed on or after July 1, 2000.
- The majority of FTB's contracts are with corporations, and certain major contracts are with partnerships. For these contractors, the bill requires the reporting of the name and SSN of the "responsible managing person." It is unclear whether all corporations and partnerships have a designated "responsible managing person."

Also, the bill provides no consequences if the contracting corporation's or partnership's "responsible managing person" refuses to furnish this information for reporting purposes.

**2. A collector of delinquent child support.** Staff anticipated that the information required to be reported under this bill could be used to issue withholding orders to collect delinquent child support owed by persons who are being reported. However, to maximize the enhancement to FTB's child support collection program and limit unnecessary reporting to EDD, the following implementation considerations are identified:

- The bill would require every public entity making a state loan or grant to report the recipient's SSN and employer's name. It is unclear the purpose for the reporting. If the recipient of the loan/grant were an employee, this employee/employer information would have already been reported under the current NER requirements. It is also unclear whether the intent is to make the grant or loan amount subject to collection for the delinquent child support and whether, if that is the intent, it would constitute a default of the loan or grant if the payment were intercepted through a withholding order for child support rather than for the purpose for which the loan was intended (i.e., small business loan, educational financial aid).
- The bill should require the entity or contractor to report, and EDD to retain, the name and address where a withholding order could be issued, if other than the name and address of the reporting entity. For example, the contract may be executed and reported by XXX Agency at its headquarters office address but payable by the Treasurer, Controller or at a branch address. To be most effective, FTB's withholding order should be issued to the "payable" address. In addition, FTB would need to know if the reported information pertains to an employee, contractor, responsible managing person or loan/grant recipient to determine the type of withholding order it should issue, if any. For instance, FTB would issue a child support earnings withholding order for employees and sole proprietor contractors who are obligors, but would not want to issue one against the responsible managing person or loan/grant recipient unless, of course, they were obligors otherwise reported as an employees.
- For FTB to attach payments made to subcontractors who are sole proprietors, the bill should be amended to require that contractors report their own names and addresses and the names and SSNs of their subcontractors who are sole proprietors.

#### Technical Considerations

Section 3303 (c)(1)(B) provides penalties for "employers" who fail to comply with the section's reporting requirements consistent with federal penalties for failure to report to the NER. However, it is unclear whether reference should be made to the state penalties instead of federal penalties. Additionally, reference to "employers" in the context of complying with the sections' reporting requirements should be "public entities."

## FISCAL IMPACT

### Departmental Costs

Currently, EDD charges FTB for its use of the NER for child support purposes. To implement this bill, it is uncertain whether EDD would create a registry for this contractor information in addition to the NER or would incorporate the contractor information into the NER. However, preliminary discussion with EDD indicates that an additional registry would be created to administer this bill. If EDD were to charge FTB to use the contractor registry an amount comparable to the amount charged to use the NER information, FTB's departmental costs would increase in the \$6,000 to \$10,000 range. That cost would be included in the child support collection program's annual budget, of which 66% is paid through federal reimbursement and 34% from the General Fund.

FTB staff anticipates that the other following costs associated with the bill would be accommodated within FTB's existing budget: (1) reporting of contract information requirements to EDD, (2) processing of any withholding orders that may be received by the department as a result of the matching of data between FTB and EDD, and (3) processing of payments received as a result of the withholding orders issued to the reporting state agency.

### Collection Estimate

Based on the results of the FTB's current child support collection program, information from the DSS, and available information from 1099 non-employee compensation reporting under current law, the additional information reporting required by public entities under Section 4 of this bill would accelerate or provide additional collections of delinquent child support on the order of \$500,000 annually.

This analysis assumes the reported information would be captured by EDD and available to FTB in a form and manner that FTB can use, as discussed under implementation considerations. This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

## BOARD POSITION

Pending.